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**OFFICE OF PETITIONS**

In re Application of	:	
Matthew J. Sherman	:	
Application No. 10/086,534	:	ON PETITION
Filed: March 4, 2002	:	
Attorney Docket No. 2685/5866	:	

This is a decision on the renewed petition to revive under 37 CFR 1.137(a), filed December 23, 2008.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed September 27, 2007. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on December 28, 2007. The Office mailed a Notice of Abandonment on June 5, 2008. Applicant filed a petition to revive under 37 CFR 1.137(a) on October 17, 2008. However, the petition was dismissed in a decision mailed on November 10, 2008. The petition was dismissed because the \$510 check submitted was not sufficient to cover the \$540 petition fee.

On renewed petition, petitioner has pointed out that an authorization was present to charge any deficiencies to his deposit account. As such, the \$30 balance has now been charged to Deposit Account No. 50-0732, as authorized. The decision will now turn to a consideration of the petition on the merits.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR 1.17(l); and (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable. The instant petition lacks item (1) and (3).

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable: "The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business."<sup>1</sup>

Moreover, delay resulting from the lack of knowledge or improper application of the patent statutes, rules of practice or the Manual of Patent Examining Procedure, however, does not constitute "unavoidable" delay.<sup>2</sup>

With regards to item (3), petitioner states that he did not receive the September 27, 2007 non-final Office action. In support thereof, petitioner has included a statement from Beverly Britt, stating that no such communication was received. However, to establish non receipt of an office action, a practitioner must:

state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the

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<sup>1</sup> In re Mattulath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143 U.S.P.Q. 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

<sup>2</sup> See Haines, 673 F. Supp. at 317, 5 U.S.P.Q. 2d at 1132; Vincent v. Mossinghoff, 230 U.S.P.Q. 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 U.S.P.Q. 1091 (D.D.C. 1981); Potter v. Dann, 201 U.S.P.Q. 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the **master docket report** showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.<sup>3</sup>

Accordingly, on renewed petition, petitioner should submit a copy of a master docket report showing all replies docketed for a due date of December 27, 2007. If no such docket report exists, petitioner should so state for the record, and provide the other evidence as listed above.

With regards to item (1) above, petitioner has not submitted a response to the September 27, 2007 Office action. A copy of that Office action is enclosed for petitioner's convenience.

Alternative Venue and Other Matters:

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from obtaining relief by filing a petition pursuant to **37 CFR 1.137(b)** on the basis of **unintentional** delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m); and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

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<sup>3</sup> MPEP 711.03(c)(II) (emphasis added).

By mail: Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

By FAX: (571)273-8300  
Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

*Cliff Congo*

Cliff Congo  
Petitions Attorney  
Office of Petitions

Enc: September 27, 2007 Office action (5 pages)



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
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Alexandria, Virginia 22313-1450  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,534	03/04/2002	Matthew J. Sherman	2685/5866	9575
26652	7590	09/27/2007	EXAMINER	
AT&T CORP. ROOM 2A207 ONE AT&T WAY BEDMINSTER, NJ 07921			MEKY, MOUSTAFA M	
			ART UNIT	PAPER NUMBER
			2157	
			MAIL DATE	
			09/27/2007	DELIVERY MODE
				PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/086,534	SHERMAN, MATTHEW J.
Examiner	Art Unit	
Moustafa M. Meky	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(d).

## Status

1)  Responsive to communication(s) filed on 21 June 2007.  
2a)  This action is **FINAL**.                    2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 4-9 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 4-9 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 17 June 2002 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application

6)  Other: *Fig. 1.*

1. The amendment filed 6/21/2007 has been received and entered by the examiner.
2. Claims 4-9 are presenting for examination.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 4-9 are rejected under 35 U.S.C. 102(e) as being anticipate by Young et al (US Pat. 6,990,116).
5. As to claims 4-9, Young shows in Fig 1, A method for spoofing stations while transmitting data through a medium in an arrangement including a first station sends a Request-to-Send (R-T) message to an Access Point (AP) that includes a duration field, and a second station sends a Clear-to-Send (CTS) message that is responsive to the RTS message that also includes a duration, where the duration field defines a period of time that the medium is to be reserved to allow unimpeded transmission of data that the first station has to transmit, and where each an obeying station in the arrangement that receives either the RTS message or the CTS message, updates a Network Allocation Vector (NAV) with the duration information obtained from the received RTS message, or from the received CTS message when a corresponding RTS message was not received, characterized by:  
said NAV being updated by said receptions from other stations, including said and other AP and other Aps, and said first station employing the NAV to inhibit transmission by said station as long as the NAV indicates that the medium is in use, and permitting resumption of transmission when the NAV indicates other than that the medium is in use;  
said first station setting a duration value for its RTS message to a value other than a time period for a predetermined subsequent message transmission. See col 7, lines 9-25.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Moustafa M. Meky whose telephone number is 571-272-4005. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

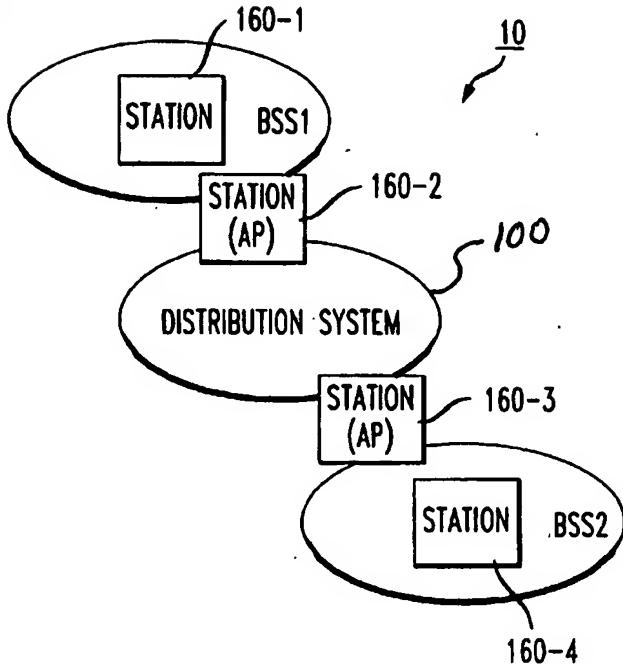
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MMM  
09/22/2007

  
MOUSTAFA MEKY  
PRIMARY EXAMINER

1/7

*Fig. 1*



*Fig. 2*

